



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

January 4, 1991

Mr. Geoffrey S. Connor
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR91-003

Dear Mr. Conner:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 9708.

You have received a request under the Open Records Act for "any and all correspondence between the governor's office and Ms. Carol Tombari, of the Governor's Energy Management Center, in reference to the disposition of oil overcharge monies collected by the state." You inform us that you have already provided the requestor with information that you believe is purely factual in nature. However, you believe that other information that is responsive to the request is excepted from required public disclosure under section 3(a)(11) of the Open Records Act.

Section 3(a)(11) of the Open Records Act protects:

inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency.

Section 3(a)(11) protects advice, opinion, and recommendation that is used in the decision-making process. Open Records Decision No. 538 (1990). Facts and written observation of facts and events, when such information is severable from advice, opinion, or recommendation cannot be withheld under section 3(a)(11). See generally Open Records Decision No. 213 (1978).

We have considered the exception you claimed, specifically section 3(a)(11), and have reviewed the documents at issue. A previous determination of this office, Open Records Decision No. 538 (1990), a copy of which is

enclosed, resolves your request. The marked portions of the document are excepted from disclosure to the public. The remaining information must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-003.

Yours very truly,



Jim Moellinger
Assistant Attorney General
Opinion Committee

JM/le

Ref.: ID# 9708, 9742

Enclosure: Open Records Decision No. 538 (1990)
Marked Documents

cc: Mr. Bruce Hight
Reporter
Austin American-Statesman
P.O. Box 670
Austin, Texas 78767